

Q&A

Educating the Bench on Court Administration

Conversation With Judge Heather D. Morse

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Judge Heather D. Morse,
Superior Court of
Santa Cruz
County

Judge Heather D. Morse's experiences performing many different court functions have given her a true appreciation for the multifaceted role courts play and the need for educating judges—in addition to court staff—in the administration of justice. She has held positions as deputy court clerk and deputy probation officer and was trained as a court reporter. Her initial interest in the business of court administration arose in 1991, when she was presiding judge of the Santa Cruz County Municipal Court. She attended a Center for Judicial Education and Research (CJER) course on court administration and spent a week networking with other presiding judges.

Judge Morse has since served as presiding judge of the Superior Court of Santa Cruz County. In that role, in addition to fulfilling her duties on the bench, she oversaw approximately 150 employees, including 10 judges, 3 commissioners, and a referee, and was responsible for everything from budgeting to courtroom security.

We're now contracting for our own services, evaluating the value of those services, and learning how to get them cheaper.

Judge Morse began her three-year term on the Judicial Council on September 15, 2002. She currently is assigned to the Policy Coordination and Liaison Committee and serves as liaison for the council's Judicial Services Advisory Committee.

Prior to joining the council, Judge Morse was a member of the Governing Committee of CJER and chaired the Presiding Judges' Educational Curriculum Planning Committee. She also has taught numerous courses on trial court administration for CJER over the past 10 years and is a past member of the Judicial Council's Trial Court Coordination Advisory Committee (1997-1999) and Trial Court Presiding Judges Advisory Committee (1998-2000).

Court News spoke with Judge Morse on the need to educate the bench in judicial administration.

Why is it important to provide education on court administration to judges?

It takes time for new judges to get comfortable being on the bench instead of in front of it. They bring their legal expertise to the job, but that does not assist them in running the entire court and the administrative issues that arise within it. It can be a daunting task.

It's similar to working as a medical doctor on a hospital staff and then becoming the administrator of the entire hospital. All of a sudden, you are responsible for the entire organization, from the multimillion-dollar budget to HR, risk management, hiring and firing subordinate judicial officers, personnel issues, litigation, and even day-to-day operations, like when there's a problem with building maintenance.

The presiding judge and the court executive officer need to work as a management team.

During your tenure on the Presiding Judges' Educational Curriculum Planning Committee, what were some of its key accomplishments?

The first was that we merged the superior and municipal judges into one educational group so that we could work on issues together. That helped people look at management issues over a continuum, as opposed to divid-

ing them up, and focused judicial leaders toward trial court coordination.

The second big milestone was inviting and including court administrative officers and executive officers in our training sessions. The presiding judge and the court executive officer need to work as a management team. While the presiding judge has most of the power and knows about judicial issues, the CEO knows more about the administrative challenges of running the court that the presiding judge might not fully understand. The executive officer is in charge of all the personnel, financial matters, and much of the day-to-day operations of the court, while the

as human resources and court budgets. Those are issues we never had to deal with before.

How has judicial education in court administration changed over the years?

CJER used to offer a budget course that basically entailed learning how to read your line-item budget and how to deal with it. Then we had the transition from county to state governance,

and now we are submitting our budgets to the state and need to learn a whole different process.

Running a court is like running a business. So CJER coordinated with professors from a business school to come and teach some of our courses. We wanted to learn skills from business leaders. We also want to work on providing an advanced degree in administration for judges.

How has presiding judges' involvement in court administration changed?

Because we are our own employer, courts are dealing with issues that many of us have not had the opportunity to address before. For example, we had to go through contract negotiations with unions. In many smaller courts, it's challenging because you're bargaining with the employees you sit beside every day in the courtroom and have relationships with.

The courts are now in charge of MOUs [memoranda of understanding], human relations, risk management, insurance, and medical and dental

organization. Although the courts were like that before, we have much more autonomy now.

What challenges are judges facing today in managing their courts?

The state budget crisis has certainly been a challenge. Things have gotten bad for counties before, but we've never had to deal with these kinds of cuts. Courts are going to have to do some imaginative and creative budget

planning in order not to lay off employees. I think all courts throughout the state have made a commitment to take whatever action they can without laying off staff or compromising access to California courts. And the presiding judge is where the buck stops.

This is a time when presiding judges, supervisors, managers, and executive officers need to be strong and show confident leadership so that the staff knows that we're there to support their interests and protect them. I think that strategic planning is and will continue to be very important in that leadership role. Having an open mind and finding creative ways to do business will be critical in the future.

Now we are focusing on thinking as a statewide branch while working as 58 local courts. This is an exciting challenge that will allow us to examine new forms of administration while still honoring local control. Managing our courts and thinking as a statewide branch will give the judicial branch more influence with the legislative and executive branches. More importantly, it will allow us to continue to provide optimum access and service in these difficult budgetary times.

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presiding judge is running the bench. To have the two working together as a management team is an exciting concept.

At one time, municipal court judges were in one room and superior court judges were in another. Now, all judges and court executive officers work together as administration teams to do strategic planning and to look at what it's like to run a multimillion-dollar organization responsible for issues such

programs. Previously, those were all services or contracts that were offered as a package through the county, but the courts must now provide them. We're now contracting for our own services, evaluating the value of those services, and learning how to get them cheaper.

At the same time, we continue to strive toward providing better public access and improving our work as a public service

What are your goals as a council member?

I always have an interest in court administration, so I'm hoping that my expertise and interest in that area can serve the state as a whole in looking at various ways that courtroom administration can evolve. I think that if we take what we learn from schools of business and private industry on how to do things better, we can provide outstanding public service. ■

Sentencing for Offenses Committed While on Bail

The circumstances are not unusual. The defendant is charged with a felony offense and is released on bail. The defendant skips out but eventually is arrested and brought to trial on the original charges. The district attorney files a new complaint charging the defendant with a single count of failure to appear while on bail, in violation of Penal Code section 1320.5, and an enhancement under section 12022.1 for committing an offense while out on bail. In a 4–3 decision, the California Supreme Court in *People v. Walker* (2002) 29 Cal.4th 577 held that a defendant may be convicted and sentenced under both sections.

The court first determined, as a matter of statutory construction, that the Legislature intended that a defendant could be convicted and sentenced under both statutes. Penal Code section 1320.5 provides, in relevant part: “Every person who is charged with or convicted of the commission of a felony, who is released from custody on bail, and who in order to evade the process of the court willfully fails to appear as required, is guilty of a felony.” Other than the elements of the offense, there is no limitation on the application of section 1320.5.

Section 12022.1, on the other hand, is an enhancement. “Specifically, section 12022.1 provides that if a person charged with a felony (the primary offense) is released on bail or on his or her own recognizance and subsequently is arrested for committing another felony (the secondary offense) while released from custody on the primary offense,

and if that person is convicted of both offenses, he or she ‘shall be subject to a penalty enhancement of an additional two years in state prison which shall be served consecutive to any other term imposed by the court.’” (*Walker, supra*, 29 Cal.4th at p. 582.) The language of section 12022.1 does not preclude its application to a defendant whose only secondary offense is a violation of section 1320.5.

The court observed that, although the two crimes share a common element—the commission of a crime while on bail—they address different interests. “[T]he gravamen of section 1320.5 is the defendant’s act of jumping bail and consequent evasion of the court’s process, while section 12022.1 turns on the defendant’s on-bail recidivism.” (*Walker, supra*, 29 Cal.4th at p. 585, footnote omitted.) Applying similar logic, the court rejected defendant’s contention that section 1320.5 was a “specific” or “special” statute that applied over the more general terms of section 12022.1; the statutes simply are not identical.

The court also found that a violation of section 1320.5 would not automatically result in enhanced punishment under section 12022.1, because the defendant would not always be convicted of the primary offense as a felony. “For example: (1) the prosecutor might move to dismiss the felony charge for insufficient evidence or after suppression of the evidence . . . ; (2) the court might dismiss the charge or set aside the indictment or information . . . or enter a judgment of acquittal before submission of the case to the jury

. . . ; (3) the prosecutor might move to dismiss the charge in the interests of justice or reduce it to a misdemeanor as part of a plea bargain; (4) the court might reduce the charge to a misdemeanor . . . ; (5) the jury might acquit the defendant; or (6) the conviction might be reversed or dismissed on a state or federal writ of habeas corpus.” (*Walker, supra*, 29 Cal.4th at p. 587.)

Finally, the majority deter-

section 654.” (*People v. Walker, supra*, 29 Cal.4th at p. 589.)

Speaking for the dissent, Chief Justice George argued that the Legislature never intended for the general on-bail enhancement to apply when the charged felony offense may be committed only by a person on bail. Under such circumstances the punishment for the underlying offense already has taken into account the fact that the crime was committed by a person on bail. Although acknowledging there may be circumstances in which a person is charged with a violation of section 1320.5 and the enhancement under section



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mined that section 654 was inapplicable. Relying on *People v. Coronado* (1995) 12 Cal.4th 145, the court noted that section 12022.1 is an enhancement that relates to the defendant’s status as a repeat offender at the time the secondary offense was committed and is not based on the *circumstances of the crime*, which typically concern what the defendant did in the commission of the secondary offense. “Because a section 12022.1 enhancement does not punish a defendant for his or her conduct while committing an offense (here, willfully failing to appear in court as required in violation of section 1320.5), but rather punishes the defendant for his or her status as a repeat offender while on bail, the enhancement does not constitute punishment of an act or omission within the meaning of

12022.1 does not apply, the dissent observed that the two statutes would most commonly be applied together. The minority, unlike the majority, found the overriding purpose of the two statutes to be the same: “[T]he focus of both sections 1320.5 and 12022.1 is on punishing the particular type of breach of trust demonstrated when a defendant commits a new offense while released on bail.” (*Walker, supra*, 29 Cal.4th at p. 598.) The dissenting opinion concluded that the view of the majority “runs counter to common sense, and improperly authorizes the unreasonable ‘piling on’ of a sentence enhancement in a manner that the Legislature almost certainly did not intend.” (*Id.* at p. 591.) ■

Final Call for Comment on Civil Jury Instructions

The civil subcommittee of the Judicial Council’s Task Force on Jury Instructions released its fourth and final set of “plain English” civil jury instructions for comment.

The task force seeks reactions to the style, format, legal accuracy, and clarity of the instructions and the usefulness of their accompanying bench notes and commentary. Its goal is to produce instructions that explain the existing law accurately, in a manner that the average juror can readily understand and that the trial bench and bar will find helpful. The deadline for comments is April 16.

CREATION OF TASK FORCE

In December 1995 the Judicial Council established the Blue Ribbon Commission on Jury System Improvement. The commission’s mission was to “conduct a comprehensive evaluation of the jury system and [make] timely recom-

mendations for improvement.” After extensive study, the commission made numerous recommendations to the Chief Justice and the Judicial Council. One of the recommendations was that

the council create a task force to draft more understandable jury instructions. The recommendation stemmed from the commission’s conclusion that “jury instructions that are presently

given in California and elsewhere are, on occasion, simply impenetrable to the ordinary juror.”

In May 2000 the task force’s Subcommittee on Civil Instructions released its first set of draft jury instructions. The ensuing public critique led the drafters to refine both the particular instructions and the more global choices about format and approach. The subcommittee released a second set of civil instructions in April 2001, and a third set a year later. This latest release is the fourth and final set of instructions to be sent out for public comment.

● To view and comment on the proposed instructions, visit the California Courts Web site at www.courtinfo.ca.gov/invitationstocomment/aproposals.htm, or contact Anita Nazir, 415-865-7519; e-mail: anita.nazir@jud.ca.gov. ■



Opportunity Knocks: Nominations Sought For Judicial Council, Advisory Committees

Want to make a difference in the administration of justice in California? The Judicial Council is accepting applications for its advisory committees and the council itself.

Nominations for the Judicial Council will be accepted through May 31; nominations for advisory committees will be accepted through June 30.

NOMINATION CRITERIA

The council's Executive and Planning Committee reviews nominations and forwards recommendations to the Chief Justice for appointment. Individuals are selected according to criteria such as:

- ▶ Prior service and active participation on a council advisory committee (for Judicial Council nominations only);
- ▶ Interest in and experience with court administration;
- ▶ Ability to maintain collegial working relationships;
- ▶ Demonstrated leadership; and
- ▶ Subject matter expertise.

It is also important for selected nominees to represent diverse backgrounds, experiences, and geographic locations. Council and advisory committee members do not serve a specific constituency but rather act in the best interests of the public and the entire court system.

JUDICIAL COUNCIL

The California Constitution created the Judicial Council, chaired by the Chief Justice, to provide policy direction to the courts, the Governor, and the Legislature concerning court practice, procedure, and administration. The council is directly responsible for:

- ▶ Establishing direction and setting priorities for the continuous improvement of the court system;
- ▶ Promulgating rules of court administration, practice,

and procedure;

- ▶ Sponsoring and taking positions on legislation that affects the California judicial system;
- ▶ Approving budgets for the California judicial branch;
- ▶ Approving reports to the Legislature; and
- ▶ Responding to appropriate mandates from the Legislature.

Certain organizations submit nominations for several of the vacancies on the Judicial Council, as specified in article VI of the California Constitution and in the California Rules of Court. Following are the vacant positions that will be appointed by the Chief Justice for a four-year term commencing September 15, 2003:

- ▶ Appellate court justice (1)
- ▶ Superior court judges (4)

- ▶ Court administrator (1)
- ▶ Attorney (1)

ADVISORY COMMITTEES

To provide leadership for advancing the consistent, impartial, independent, and accessible administration of justice, the Judicial Council must be aware of the issues and concerns confronting the judiciary, as well as appropriate solutions and responses. The council carries out this mission with help from its advisory committees and task forces.

The advisory committees advise the council as it works to study the condition of court business and improve judicial administration. They monitor areas of continuing significance to the justice system and make recommendations to the council. To find out the purpose and

current membership of each committee, or to complete an interest card online, visit www.courtinfo.ca.gov/courtadmin/jc/advisorycommittees.htm.

The Chief Justice appoints advisory committee members according to positions prescribed in the California Rules of Court and by statute. Terms of service on a committee are generally three years and begin on November 1.

● Vacancy information and nomination and application forms can be downloaded from the California Courts Web site at www.courtinfo.ca.gov/courtadmin/jc/nomform/htm, or they can be completed online. For more information, contact Secretariat, Administrative Office of the Courts, 415-865-7640; e-mail: jcservices@jud.ca.gov. ■

Join a CJER Education Committee

Want to support the continued professional development of judges and court staff in the judicial branch? Beginning in April, the Center for Judicial Education and Research (CJER) will accept applications for 20 of its education committees.

CURRICULUM-BASED COMMITTEES

This year's selection of new committee members is the latest step in CJER's process of developing a formal curriculum for judicial branch education. The process, which officially began in 2000, has included converting CJER's existing ad hoc, event-based planning committees to permanent subject matter or audience-specific education committees.

According to CJER Director Karen Thorson, the focus in event-based education is on fill-

ing a distinct time slot, and there is a tendency for each educational event to be recreated every time it is planned. In contrast, the new curriculum-based process allows for permanent committees with rotating memberships. Each committee creates an overall curriculum for its topic area, which then becomes the basis for a focused delivery plan.

"California is the only state that has this type of curriculum-based educational model for its judiciary," remarks Ms. Thorson. "Most other states just have an approved list of topics, but not the complete curriculum design we have."

APPLICATION PROCESS

In April CJER mailed application packets to the courts and posted them to the public Cali-

fornia Courts Web site at www.courtinfo.ca.gov/courtadmin/jc/nomform.htm. The packets include a summary of each committee's responsibilities and requirements for membership.

The CJER Governing Committee will appoint the new members in September. Starting this year, the terms of service will coincide with those of the Judicial Council's advisory committees and will run from November 1 through October 31. All terms will be for three years.

Applications can be submitted online, via e-mail, or by fax. The deadline to submit applications is June 30.

● For more information, contact Barbara Jo Whiteoak, CJER, 415-865-7800; e-mail: barbara.whiteoak@jud.ca.gov. ■

Nominations Sought for National Awards

NCSC REHNQUIST AWARD

The National Center for State Courts (NCSC) will accept nominations in May and June for the William H. Rehnquist Award for Judicial Excellence.

The award is presented to a state court judge who possesses the qualities of judicial excellence exemplified by William H. Rehnquist, Chief Justice of the U.S. Supreme Court. Nominees should have at least 15 years of experience on state courts of appellate, general, limited, or special jurisdiction and should have demonstrated the following qualities: integrity, fairness, open-mindedness, knowledge of the law, adherence to professional ethics, creativity, sound judgment, intellectual courage, and decisiveness. Nominees also should have promoted

innovations of national significance in the management of state courts and provided leadership, at the national or state level, toward improving systems of justice.

Past California recipients of the Rehnquist Award include Chief Justice Ronald M. George (2002) and Judge Veronica McBeth of the Superior Court of Los Angeles County (1998).

● For more information, visit NCSC's Web site at www.ncsc.online.org or contact Shelley Fischer, National Center for State Courts, P.O. Box 8798, Williamsburg, Virginia 23187-8798, 800-877-1233.

NACM AWARDS

The National Association for Court Management (NACM) is now accepting nominations for its Justice Achievement Award. This award

recognizes courts and related organizations for meritorious projects and accomplishments that enhance the administration of justice.

● For more information, visit www.nacmnet.org or contact NACM, 757-259-1841.

NACM is also accepting nominations for its Award of Merit. This, the association's most prestigious individual award, is presented annually to a person who has demonstrated leadership and excellence and whose work reflects NACM's purposes of increased proficiency of administration, modern management techniques, and support for the use of technological methods.

● For more information, visit www.nacmnet.org or contact John W. Sleeter, 360-786-5559.